IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 4TH OCTOBER 2006 / 12TH ASWINA 1928

WP(C).No. 22480 of 2003(A)

PETITIONER:

SRIDHARAN S/O. RAVUNNI NAIR,
PUTHANKULAM HOUSE, P.O. KOTTAPPURAM,
VIA. SREKRISHNAPURAM, OTTAPALAM TALUK.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:
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1. **THE STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, PALAKKAD.**
2. **THE TAHSILDAR, OTTAPALAM TALUK, TALUK OFFICE, OTTAPALAM.**
3. **THE EXCISE RANGE OFFICER, OTTAPALAM.**
4. **JOSE JOSEPH, EANTHUMPILAKKAL HOUSE, KARIMBUZHA, KUNNAKKATT VILLAGE, OTTAPALAM TALUK**
5. **THE ASSISTANT EXCISE COMMISSIONER, PALAKKAD**

BY GOVERNMENT PLEADER SRI.SHYSON P.MANKUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C)NO.22480/2003

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE JUDGMENT DT.10.3.72 IN OP. 108/70 BY THIS HONOURABLE COURT.

EXT.P2:- COPY OF THE JUDGMENT DT. 8.8.1990 IN OP. NO 2720/86 ,BY THIS HONOURABLE COURT.

EXT.P3:- COPY OF THE DEMAND NOTICE DT.9.6.03 , BY THE 2ND RESPONDENT.

/TRUE COPY/

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C.N.RAMACHANDRAN NAIR,J.

W.P.C.NO. 22480 OF 2003

Dated this the 4th day of October, 2006

JUDGMENT

Petitioner is challenging Ext.P3 revenue recovery notice issued for recovery of Rs. 13070/- together with interest stated to be due from the petitioner's late father during the year 1968-69. The department's case is that petitioner's father along with fourth respondent were joint bidders of toddy shop No. 6 in Ottappalam range for the year 1968-69. Even though they were granted right to sell toddy during 1968-69, they did not enter into agreement. Therefore toddy shop was reauctioned which led to loss of Rs. 13,070.73 to the department. Consequently revenue recovery proceedings are initiated against the petitioner's late father in 1970 and petitioner's father filed O.P.No. 108 of 1970 which was disposed of by this Court on 10.3.1972 with direction to reconsider the matter after hearing the petitioner's father. However, no orders were passed till 1986 when revenue recovery proceedings were again initiated. Petitioner's father who was then alive filed O.P.No. 2720 of 1986 and this Court vide judgment dated 8.8.1990 disposed of the same

with direction to pass orders pursuant to the earlier judgment and thereafter only proceed for recovery. Petitioner's case is that his father died on 19.9.1994 and until then no proceedings were initiated pursuant to the directions contained in the two judgments above referred. In the counter affidavit filed by the second respondent, it is conceded that order was passed by the District Collector as late as on 7.8.2000 and it was served on the legal heir of the deceased on 18.9.2000. Even though it is stated that petitioner's father was heard, such hearing would have taken place on any date prior to 19.9.1994, when petitioner's father died. Therefore if hearing was held as stated, the order was passed not less than six years after the date of hearing. Respondents were aware of the death of the father of the petitioner, and that is the reason why the order was served on one of the legal heirs on 18.9.2000. Even though order was served on 18.9.2000, revenue recovery proceedings appear to have been initiated against the petitioner who is the person different from the legal heir on whom order is stated to have been served only in 2003, when O.P. was filed. Even in the counter affidavit respondents have not cared to produce the

order based on which recovery is continued. In the counter affidavit it is stated by the fifth respondent that original excise records were destroyed in 1990 itself. Obviously the District Collector would have issued the order without referring to the original excise records. I am convinced ,having regard to nature of dispute, that whether petitioner's father was grantee of licence for carrying on business in toddy in 1968 cannot be decided without referring to original records which were destroyed 16 years back. In the circumstances, and since concerned officials were grossly irresponsible in failing to issue orders during the life time of the defaulter, recovery cannot be continued against the legal heirs as action is patently arbitrary and without jurisdiction. O.P. is therefore allowed quashing revenue recovery proceedings against the petitioner. There will be direction to Excise and Revenue recovery authorities not to proceed against other legal heirs also for recovery of same arrears.

(C.N.RAMACHANDRAN NAIR)
Judge